

Service Date: October 5, 1984

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * *

IN THE MATTER OF THE COMPLAINT)	UTILITY DIVISION
of Consumers Connected to Burlington)	
Northern's Water System in Paradise,)	
Montana.)	DOCKET NO. 84.4.12
)	
Complainants,)	PRELIMINARY ORDER NO. 5084
)	
vs.)	
)	
Burlington Northern Railroad Company)	
(Clarkland, Inc.))	
)	
Defendant.)	

* * * * *

PRELIMINARY ORDER

* * * * *

APPEARANCES

FOR THE COMPLAINANTS:

James Paine, Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620.

FOR THE DEFENDANT:

Thomas W. Spence, General Counsel, Billings Region, Burlington Northern Railroad Company, 1201 Norwest Center, Billings, Montana 59101.

FOR THE COMMISSION:

Opal Winebrenner, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620.

BEFORE:

HOWARD L. ELLIS, Commissioner and Hearing Examiner.

BACKGROUND

1. On March 19, 1984, the Montana Public Service Commission (PSC or Commission) received a Complaint Petition signed by numerous Paradise, Montana residents alleging that the community's water service, long supplied by Burlington Northern Railroad Company (BN or BNRC) to be totally inadequate in the summer.

2. On April 16, 1984, Commissioner Howard Ellis met with some Paradise consumers, and inspected the Paradise water system.

3. On April 19, 1984, the Commission officially notified BNRC of the Paradise water system complaint; BNRC provided its Answer on May 14, 1984.

4. On April 24, 1984, the Commission engineer, James Watson, investigated the Paradise water system along with Dan Fraser, Water Quality Bureau, Department of Health and Environmental Sciences.

On May 3, 1984, the Commission received a copy of Dan Fraser's letter to G.E. Thiel, BNRC superintendent concerning system deficiencies he had found during his inspection. The Water Quality Bureau required BNRC to correct the following deficient areas:

- a. Roof over well
- b. Chlorine gas
- c. Elevated steel storage tank
- d. Abandoned redwood tank
- e. Fire hydrants
- f. System operator

5. On May 22, 1984, the PSC provided the BN with written notification of an amended complaint which included copies of the PSC Staff Engineer field report, a report by the State of Montana Department of Health Water Quality Bureau, and a May 1, 1984 letter from Paradise citizens listing ten (10) specific areas of complaint. BNRC responded on May 22, and June 19 to the Complaint allegations and announced that certain corrective measures had been or shortly would be

completed. On July 2, the Commission requested BNRC to address other complaint areas; BNRC responded on July 5, 1984.

6. On July 25, 1984, the PSC issued a Notice of Public Hearing to interested parties setting a hearing for Monday, August 13, 1984, at 10:00 a.m. in the Grade School Gymnasium, Paradise, Montana.

7. The Montana Consumer Counsel (MCC) formally intervened in the Docket as representative of the Paradise water consumers.

8. At the close of the hearing, the parties stipulated to allow the Commission to issue a final order in this Docket.

9. The Commission requested both BN and MCC to submit proposed orders; they were received on August 28, 1984.

FINDINGS OF FACT

History of System

10. The present water system at Paradise, Montana, was installed by the Northern Pacific Railway Company (NP), a Burlington Northern Railroad predecessor, in the early 1900's, to provide water for railroad operations at Paradise, including a tie plant, hotel, lunchroom, water for steam engines, livestock, and other various railroad needs.

11. As railroad employees moved into the community, the NP allowed Paradise residents to hook onto its water mains and charged a flat fee of \$2.00 per month for water consumption. The flat fee has remained \$2.00 per month per service to date.

12. The water system has been owned, operated, and maintained by the NP and its successor BN since its original installation in the early 1900's. Other than the \$2.00 monthly service hookup fee, no charges have been made to consumers for water consumption.

13. The water distribution system at Paradise was designed as, and is at this time, a gravity-fed system consisting of a 20 x 30 well providing water, a pump house with two electric motors and a backup diesel engine, a 100,000 gallon elevated water tank, water mains that vary from six inches to four inches in diameter, with the exception of a two inch main at the end of the system

that services the Paradise school, and attendant services that connect approximately 104 customers to the system.

14. In addition to the water distribution aspect of the system, there are five fire hydrants attached to the mains. The sixth hydrant located in the park, is attached to a main that does not service the community.

15. Originally the railroad water needs were substantial in Paradise, but over the years railroad facilities have been closed. Other than the water distribution system, the only railroad presence in Paradise at this time is a depot, staffed by an agent.

16. When the railroad had substantial facilities at Paradise, it employed people from the community and some of their time was allocated to the maintenance and operation of the Paradise water system.

17. The daily operation of the Paradise water system is the responsibility of the local station agent and include checking water levels at the tank, checking chlorine levels, submitting water to a testing laboratory to determine water quality and, finally, submitting monthly statements to customers.

18. Major maintenance of the system is handled by BN personnel from Missoula and Helena on an "as needed" basis.

19. Prior to March of 1984, no customers of the Paradise water system had filed complaints with the Commission concerning the Paradise water system.

20. The Paradise water consumers' complaint basically alleged that the Paradise water system, owned and operated by BN, was deteriorated, water pressure was inadequate, and fire protection was inadequate.

21. The alleged complaint areas can be summarized as follows:

- (A) Roof Over Well: This roof has collapsed. There is a clear danger of timbers falling into the dug well.
- (B) Chlorine Gas: As chlorine gas is routed into a pit where system pumps are located, there arises a potentially dangerous situation for the system operator should a gas leak occur.

- (C) Elevated Storage Facility: Leaks in this tank have been plugged with creosote-treated wooden plugs, thereby causing possible future health problems associated with potential contamination of the stored water. In addition, the tank has suffered from years of neglect and is of doubtful future reliability.
- (D) Fire Hydrants/Fire Protection: The existing fire hydrants appear to be very old and in bad condition. Inadequate pressure results in insufficient fire protection for the community.
- (E) Operator: The operator of the water system must be certified to be such by appropriate state authorities. He is not.
- (F) Insufficient Water Pressure: The water subscribers complain of inadequate water pressure to perform normal functions in the household requiring use of the water system.

These areas were the same as those found by the Commission engineer, and the Water Quality Bureau during the inspection conducted on April 24, 1984.

22. At the August 13 hearing, the following Paradise water consumers testified in support of the allegations contained in the Complaint:

- | | |
|----------------------|-------------------|
| - Walt Hermiston | - Rella Lartz |
| - Rhonda Munsch | - Wella Marquard |
| - Clyde Terrell | - David Holmquist |
| - Shirley Terrell | - Bob Stephens |
| - Susan Lane | - Susan Snead |
| - Mary Ann Holmquist | - Margaret Lacock |
| - Rich Raines | - Lyle Peterson |
| - Gladys Shutter | - Terry Brubaker |
| - Merle Steel | - Laura Rislaid |
| - Ted Lartz | - Jack Lane |

23. Additionally these individuals appeared and testified concerning the Complaint:

- Sanders County Commissioners: Norman Resler, Plains
John Muster, Plains
- Pastor James Dickinson, Plains
- Representative Joe Hammond, Alberton
- Bill Underwood, Missoula

24. BN sponsored the following witnesses who presented testimony:

- Gary Burchard, Paradise BN Station Agent
- Bernard White, BN Bridge and Building Superintendent, Rocky Mountain Division
- James Karcher, Civil Engineer, HRM Associates, Billings

25. Many of the concerns of the Paradise consumers were addressed by the BN. Except for the alleged pressure problems, the BN has sought to satisfy certain of the alleged problems in the following manner:

- (A) The old redwood, elevated storage facility was physically disconnected from the rest of the system in September of 1983. The structure, old and in very poor physical condition, was dismantled in July of 1984. This should reduce somewhat the possibility of contamination to the rest of the system.
- (B) All wooden plugs (creosote-treated) in the remaining elevated storage facility have been replaced with metal, self-tapping plugs with rubber sealants and/or with toggle bolts. Again, this should reduce the possibility of system contamination.
- (C) The diesel engine was rebuilt. This engine would be utilized in the event of an electrical outage, precluding utilization of the electrically-operated pumps. One of the large pumps was renovated as well.
- (D) A new roof over the well with steel-crossover supporting beams has been installed.
- (E) New chlorine injectors and monitors were installed in the spring of 1984. Chlorine gas detection equipment has been ordered and will be installed this fall, shortly after receipt of same.
- (F) Four reconditioned fire hydrants (from BN's stock) and one new hydrant have been installed.
- (G) BN plans to replace two valves and certain piping within the pumphouse due to the age of these assets.

26. BN has incurred \$35,000 plus in expenses since April, 1984 for the aforementioned repairs. BN counsel assured all interested parties that these expenses would not be grounds now, or in the future, for any requested rate relief from the Commission.

The Commission finds that these steps were necessary, preliminary steps toward improving the quality of service rendered to Paradise water subscribers.

27. Based on the testimony presented at the hearing, the Commission finds that inadequate water pressure continues, however, to exist throughout the Paradise water system.

Summary of Complainants' Testimony

28. Walter Hermiston, an employee for many years at the BN's tie plant, testified as to his recent water service experiences. Hermiston, having helped maintain the water system for many years, related a recent pressure test experience of the local volunteer fire department. Attaching a 2½ inch fire hose and opening a hydrant resulted in a stream of water about 12-15 feet.

Additionally, Hermiston had conducted a number of static pressure tests and some flow pressure tests at various water consumers' residences in 1984. (See MCC Exhs. 1 and 2)

On March 30, 1984, testing Robert Altmiller's pressure, Hermiston gauged the static pressure in the residence to be 26 psi. Allowing water to flow caused the pressure to fall to 10 psi. A significant number of flow tests conducted by Hermiston resulted in pressure measuring less than (in some instances, substantially less than) 20 psi.

29. Many of the public witnesses told of their inability to bathe and sprinkle their lawns at the same time, or discussed their inability to shower and flush toilet facilities simultaneously. Witnesses also testified concerning very long times incurred to refill toilet tanks.

Some of these witnesses, no doubt, have very long service lines which may, of themselves, create pressure problems. Some consumers however, have relatively new service lines and are not too great a distance from the main, yet pressure problems still plague them.

Many expressed concern about adequate fire protection for the grade school, located at approximately the furthest point east on the system, at a marked higher elevation.

Summary of BN Testimony

30. Gary Burchard, BN station agent in Paradise and the water system operator, appeared and testified on behalf of BN, and explained his duties as the water system operator. He stated that he has filed the necessary water system operator application forms and hopes to be certified this fall.

31. Bernard White, BN Supervisor of Bridges, Buildings and Related Water Projects, Rocky Mountain Division, also testified. White detailed the upgrading/maintenance efforts on the Paradise water system that have been conducted by BN this year (See Finding of Fact No. 25).

32. James Kaercher, a civil engineer with HKM & Associates, Billings, Montana, appeared and testified for BN. Kaercher, having only cursorily examined the Paradise water system at the time of hearing, was able to draw some preliminary conclusions.

He stated that the large diameter shallow well currently serving Paradise is an excellent one. The distance from the existing well to the community, however, may create some pressure problems.

It is also apparent that the distance from the existing storage facility plus the limited elevation of the 100,000 gallon tank creates the primary pressure problems. There may be others caused perhaps by build-up in lines as well as extended service lines, but the elevation of the current tank is clearly a limiting factor.

33. William Underwood, consulting civil engineer from Missoula, Montana, also verified the water tank limitation. Underwood had been asked by concerned Paradise water consumers to advise them on construction options. Based on his preliminary observations he stated that with the existing storage facility, the static pressure in the community cannot be significantly improved due primarily to gravitational limitations.

34. Based upon his preliminary examination of the Paradise water system Mr. Kaercher developed rough construction costs for rehabilitation of the water facilities. Mr. Kaercher estimated that it would cost between \$315,700 and \$646,000 to upgrade the facilities to provide consumers 35 psi of water pressure, which is the current standard pressure required for newly constructed water utilities. The variation in construction costs just presented results from engineering considerations and depending on the water utility design criteria selected, may increase or decrease.

35. It is the Commission's understanding that one of the primary design considerations contributing to the variation in construction costs presented is the need for fire flow. Fire flow requirements are a major engineering consideration when designing a community water supply and for a small water utility, such as the one in Paradise, it can account for approximately 50% of the cost of constructing a water utility. Provision of adequate fire flows is a desirable design criteria but it

is not mandatory and many water utilities operating in the State of Montana have elected not to consider this design element, due to the significant increases in construction costs associated with providing fire flows.

Other Issues

36. As an unincorporated community, Paradise has no legally elected city government. Due to the lack of an incorporated city government, BN has expressed frustration because it does not know who or what entity, if any, can legally represent the Paradise consumers in this Docket. It should be noted that Paradise does have, however, a duly elected Sanders County commissioner who represents the county district of which Paradise is a part.

37. While the Commission is cognizant and sympathetic to BN's concern, for the Commission's purposes in this complaint, the Paradise consumers are legally represented by the Montana Consumer Counsel. The Commission expects that BN and MCC will work together to solve the complaint, just as the MCC does in any other complaint proceeding in which it participates as the consumer representative. Further, the Commission does not believe there is anything to prevent BN and the MCC from also meeting and working with the Sanders County Board of County Commissioners, apparently the only elected officials with jurisdiction over the Paradise community, to work out an acceptable solution.

38. BN on numerous occasions has expressed a desire to deed the water utility facilities located in Paradise to the consumers. The consumers thus far have indicated that they do not want the responsibility of owning and operating the water utility because of the condition of the physical plant which needs numerous improvements with an unknown dollar cost.

The Commission does not want to take a position relative to ownership of the utility but it is of the opinion that the citizens of Paradise should continue to investigate the possibility of forming either a water users association or a county water district in view of public funds that are available to these entities for rehabilitation of water facilities. Public funds for rehabilitation of community water supplies are available in the form of low interest loans and grants from such agencies as the Farmers Home Administration, Community Development Block Grant Funds, Department of Natural Resources and Conservation, Water Development Bureau just to name a few. If funds from these

sources could be obtained it may be to the benefit of the consumers to own the system because lower water rates would probably result under public ownership as opposed to private ownership.

39. Numerous individuals submitted written letters or statements addressed to the Commission during the August 13, 1984 public hearing, and thereafter. The Commission explained at the public hearing that it is statutorily required, in making its final decision in any docket, to only consider testimony that has been presented under oath and subject to cross-examination.

The Commission maintains a "correspondence" file in which letters or statements are placed for reference. These materials are not part of the official record, and cannot be considered by the Commission in making its final decision in this Docket.

Conclusion

40. In complaint proceedings before the Commission, the parties are expected to make good faith efforts to settle the complaint between themselves. When the parties are unable to reach such a settlement, the Commission conducts a formal fact-finding public hearing to determine whether a legitimate complaint exists, and what action is proper to solve the complaint.

41. The parties in this proceeding were unable, for whatever reasons, to reach an acceptable solution to the complaint. The Commission, therefore, conducted a public hearing where the Complainants-Paradise water consumers, testified concerning their water problems, and BN responded. As discussed earlier in this Order, there is no question that improvements to the Paradise system need to be made if water pressure is to be increased; the only question is what improvements should be done.

42. At the August 13 public hearing, BN provided some tentative improvement options. The Commission is continuing this Docket to allow BN time to develop viable system improvement options for presentation at a later time.

43. The Commission supports BN's desire to meet with the Paradise water consumers in order to determine precisely what system improvements, given cost considerations, are reasonable to address the system's water pressure problem. The Commission finds that BN, and MCC, as representative of the Complainants, can and should go forward with meetings with the water system consumers in Paradise to be scheduled at their combined convenience.

The Commission will not, however, conduct these meetings under its auspices, since the purpose of the meetings is to work out an acceptable solution to the complaint among the parties. It is the burden of the parties to any complaint to meet together, whenever and however they choose, to try to work out a solution to the complaint. It is not the Commission's role to act as facilitator or mediator between the parties for such meetings.

44. The Commission finds that a time period of 90 days from the service date of this Order is a reasonable period of time for BN, and MCC and the Complainants to meet together to discuss options, and for BN to accomplish the necessary engineering and cost studies for the options deemed reasonable. In order to monitor the progress of the parties toward this end, the Commission will require that the parties submit biweekly status reports.

45. At the end of that time period, or sooner if the parties are prepared, the parties will present their solution(s) to the Commission. If the parties have been able to reach a mutually agreeable solution to the Complaint, that solution may be presented to the Commission via a written stipulation signed by the parties to the Complaint. The stipulation would include a precise description of the improvements to be made and their attendant engineering and construction costs studies.

If the Commission finds that the stipulation represents a reasonable solution to the Complaint, the Commission may accept the stipulation by issuing a final order so indicating. In that event, another Commission conducted public hearing would not be necessary. The Commission strongly encourages the parties to make a good faith effort to try to resolve the Complaint in this manner.

If however, the parties are not able to reach a mutually agreeable solution, the Commission would set a date for a Commission-conducted public hearing. The purpose of that hearing will be for the parties to formally present to the Commission options they have considered to be acceptable, with attendant cost estimates. At the conclusion of the hearing, the Commission would determine what action should be taken to improve the water system, and would then issue a final order to that effect.

46. It should be noted that BN, as a regulated water utility, may apply to the Commission for a water rate increase to cover both the costs of whatever water system improvements are ordered, and the costs of operation and maintenance expenses to continue the operation of the water system. The obvious result would be an increase in water consumer rates over the current \$2.00 per month charge. The exact amount of any rate increase would ultimately be determined and approved by the Commission through the normal ratemaking procedures.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the subject matter and the parties in the complaint proceeding, in that the Burlington Northern Railroad Company, as owner of the Paradise public water system, is a public utility, and the citizens of Paradise are the water consumers of that water system. Title 69, Chapter 3, MCA, particularly 69-3-101, 102, 321 and 330, MCA.

2. The Montana Public Service Commission has given all interested people reasonable notice and an opportunity to participate in the matter. 69-3-321, MCA; 69-3-325, MCA; and Title 2, Chapter 4, MCA.

3. The Montana Public Service Commission is obligated to investigate complaints brought against a regulated public utility that "any. . .acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of . . . water. . .or any service in connection therewith . . . is in any respect unreasonable, insufficient, or unjustly discriminatory; or any service is inadequate." 69-3-321, MCA.

4. Based on the complaint record and the August 13, 1984 public hearing, the Montana Public Service Commission finds that the Paradise water system, at this time, does not provide adequate water pressure to serve its consumers. The complaint record at this point does not contain adequate information concerning the means available to improve the water system at a reasonable cost. 69-3-330, MCA.

5. The Montana Public Service Commission will continue this complaint proceeding, until such time that the parties are able to provide adequate information concerning system

improvements. The Commission will schedule a public hearing at which time such information will be formally presented. Title 69, Chapter 3, MCA.

PRELIMINARY ORDER

THE MONTANA PUBLIC SERVICE COMMISSION HEREBY ORDERS THAT:

1. The complaint proceeding in Docket No. 84.4.12 shall be continued indefinitely.
2. Within 90 days from the service date of this Preliminary Order:
 - a. The parties to this Docket should meet together, as they determine, to discuss and decide what the possible alternatives and methods for improving the water pressure in the Paradise water system are, and to obtain input from the community concerning those alternatives and their costs.
 - b. Burlington Northern Railroad Company shall conduct the necessary studies concerning the present condition of the Paradise water system, the viable alternatives to improve the water system and its distribution consistent with the needs, desires and cost restraints as discussed with the Paradise water consumers.
3. During the 90 day period, the Burlington Northern Railroad Company and the Montana Consumer Counsel shall keep the Public Service Commission informed of their progress in implementing Preliminary Order Paragraph No. 2 through biweekly status reports to be sent to the Commission offices.
4. At the end of the 90 day period, or sooner if the parties are prepared, the Public Service Commission shall determine the appropriate action to be taken, as discussed in Finding of Fact No. 95, which may include acceptance of a stipulation or conducting another public hearing. Thereafter, the Commission shall issue its final order in this proceeding, and the Docket will be closed.

DONE IN OPEN SESSION, at Helena, Montana, this 3rd day of October, 1984 by a 4-0 vote.

Howard L. Ellis, Hearing Examiner
Commissioner

Thomas J. Schneider, Chairman

John B. Driscoll, Commissioner

Danny Oberg, Commissioner

ATTEST:

Madeline L. Cottrill
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.